



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 906**

[Doc. No. AMS-FV-14-0015; FV14-906-2 IR]

**Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Change in Size and Grade Requirements for Grapefruit**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule relaxes the minimum size and grade requirements currently prescribed for grapefruit under the marketing order for oranges and grapefruit grown in Lower Rio Grande Valley in Texas (order). The order is administered locally by the Texas Valley Citrus Committee (Committee). This rule relaxes the minimum size requirement for grapefruit from 3-5/16 inches to 3 inches in diameter and reduces the minimum grade requirement for small-sized grapefruit. This rule will provide additional grapefruit to meet market demand, helping to maximize fresh shipments.

**DATES:** Effective March 1, 2014; comments received by April 29, 2014 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue

SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail: [Doris.Jamieson@ams.usda.gov](mailto:Doris.Jamieson@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237,

Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13175, and 13563.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule

on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule relaxes the minimum size and grade requirements for grapefruit prescribed under the order. This rule relaxes the minimum size requirement for grapefruit from 3-5/16 inches to 3 inches in diameter and reduces the minimum grade requirement for small-sized grapefruit. This rule will provide additional grapefruit to meet market demand and will help maximize fresh shipments. These changes were unanimously recommended by the Committee at a meeting on December 11, 2013.

Section 906.40 of the order provides, in part, authority to establish minimum grade and size requirements for Texas citrus. Section 906.340 of the rules and regulations includes Table II that specifies the numerical size designations and diameters used to delineate the available pack sizes for grapefruit. Section 906.365 specifies the minimum grade and size requirements for fresh shipments of Texas grapefruit.

At its meeting, the Committee discussed the impact the recent freeze in California had on the citrus crop and agreed the freeze had reduced the amount of fruit available for shipment to the fresh market. They also discussed the decline in citrus production in Florida caused by citrus greening and other diseases. The Committee believes this creates a shortage of fruit available to supply the fresh fruit market, which the Texas citrus growers and handlers should fill. The Committee noted that additional fruit was available from the Texas citrus industry. However, the fruit is smaller in size and would not meet the order's current size and grade requirements. The Committee also recognized that consumers are now showing a preference for smaller-sized fruit. The Committee believes relaxing the requirements would make more fruit available to fill the market shortfall caused by the decline in production from other growing regions and provide smaller-sized fruit to meet consumer demand.

Consequently, to make more fruit available for shipment to the fresh market and to meet consumer demand, the Committee recommended a relaxation of the size and grade requirements for grapefruit. This rule changes the minimum size requirement for grapefruit from 3-5/16 inches (size 56) to 3 inches (size 64) in diameter and adds size 64 to the

available pack sizes for grapefruit listed under Table II in § 906.340, as well as adding language concerning pack and sizing requirements.

Currently, fruit sized 48 (3-9/16 inches) and larger must meet a minimum grade requirement of a "Texas Choice" as defined in § 906.137 of the order, while size 56 fruit must meet the more restrictive grade of a U.S. No. 1. This rule relaxes the minimum grade for a size 56, establishing a minimum grade of "Texas Choice" for both size 56 and size 64 grapefruit. This makes the minimum grade consistent for all available sizes.

The Committee believes relaxing these size and grade requirements will make more fruit available to meet market demand, helping to maximize fresh shipments and increasing returns to growers and handlers.

The Committee also recommended a relaxation in the minimum size requirement for oranges covered under the order. This change is being considered under a separate action.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact

of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 13 registered handlers of Texas citrus who are subject to regulation under the marketing order and approximately 150 producers of grapefruit in the regulated area. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

According to National Agricultural Statistics Service data, the average f.o.b. price for Texas grapefruit during the 2012-13 season was \$24.10 per box, and total fresh shipments were approximately 3 million boxes. Using the average f.o.b. price and shipment data, and considering a normal distribution, the majority of Texas grapefruit

handlers could be considered small businesses under SBA's definition. In addition, based on production data, grower prices, and the total number of Texas citrus growers, the average annual grower revenue is below \$750,000. Thus, the majority of handlers and producers of grapefruit may be classified as small entities.

This rule relaxes the size and grade requirements for grapefruit prescribed under the order. This rule relaxes the minimum size requirement for grapefruit from 3-5/16 inches (size 56) to 3 inches (size 64). This action also relaxes the minimum grade requirement for size 56 fruit from a U.S. No. 1 to a "Texas Choice" and establishes the minimum grade for a size 64 as a "Texas Choice." These changes are expected to make additional fruit available for shipment to the fresh market, maximize shipments, provide additional returns to handlers and growers, and respond to consumer demand for small-sized fruit. Authority for these changes is provided in § 906.40. This rule amends the provisions in §§ 906.340 and 906.365. The Committee unanimously recommended these changes at its December 11, 2013, meeting.

This rule is not expected to increase costs associated with the order's requirements. Rather, it is anticipated that this action will have a beneficial impact. Reducing size and grade requirements will make additional fruit



available for shipment to the fresh market. The Committee believes this will provide additional fruit to fill the shortage caused by the reduced amount of fruit available from other growing regions and will provide the opportunity to fulfill growing consumer demand for smaller-sized fruit.

This action will also provide an outlet for fruit that may otherwise go unharvested, maximizing fresh shipments and increasing returns to handlers and growers. The benefits of this rule are expected to be equally available to all fresh grapefruit growers and handlers, regardless of their size.

An alternative to this action would be to maintain the current minimum requirements for domestic shipments of grapefruit. However, leaving the requirements unchanged would not make any additional fruit available nor would it provide smaller-sized fruit to meet consumer demand. Therefore, this alternative was rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Texas citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Texas citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the December 11, 2013, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:  
<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to size and grade requirements currently prescribed for grapefruit under the marketing order for oranges and grapefruit grown in Lower Rio Grande Valley in Texas. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The shipping season for

grapefruit has already started; (2) this action relaxes current size and grade requirements; (3) the Committee unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

### **List of Subjects**

7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

#### **PART 906 - ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS**

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 906.340, paragraph (a)(2)(ii)(A) and Table II-Grapefruit are revised to read as follows:

§ 906.340 Container, pack, and container marking regulations.

(a) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) Grapefruit, when packed in any carton, bag, or other container, shall be sized in accordance with the sizes in the following Table II, except as otherwise provided in the regulations issued pursuant to this part, and meet the requirements of standard pack; and, when in containers not packed according to a definite pattern, shall be sized in accordance with the sizes in Table II: Provided, That the packing tolerances in the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), shall apply to fruit so packed. All fruit packed to size 64 in the following Table II shall be sized in accordance with the sizes in Table II but need not otherwise meet the requirements of standard pack: Provided, That they meet the same tolerances for off-size and pack as defined in the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona).

Table II - Grapefruit  
[7/10 bushel carton]

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Pack size/Number of grapefruit	Diameter in inches	
	Minimum	Maximum

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18	4-15/16	5-9/16
23	4-5/16	5

27	4-2/16	4-12/16
32	3-15/16	4-8/16
36	3-13/16	4-5/16
40	3-10/16	4-2/16
48	3-9/16	3-14/16
56	3-5/16	3-10/16
64	3	3-8/16

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\* \* \* \* \*

3. In § 906.365, paragraph (a) (4) is revised to read as follows:

§ 906.365 Texas Orange and Grapefruit Regulation 34.

(a) \* \* \*

(4) Such grapefruit are at least pack size 64 with a minimum diameter of 3 inches.

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**Dated: February 26, 2014.**

Rex A. Barnes,  
Associate Administrator,  
Agricultural Marketing Service.

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